



# Memorandum

**TO:** CITY COUNCIL

**FROM:** Mayor Chuck Reed,  
Councilmembers Sam  
Liccardo, Madison  
Nguyen, and Nancy Pyle

**SUBJECT:** ORDINANCE EXTENDING A  
TEMPORARY MORATORIUM  
ON NEW BAIL BONDS  
ESTABLISHMENTS

**DATE:** September 11, 2009

**APPROVE** *Chuck Reed*

*Sam Liccardo*

*Nancy Pyle KS*  
*Madison P. Nguyen NV*

**RECOMMENDATION:**

Approve staff recommendation, with the following amendments:

- 1) Revise Section 2 of the proposed ordinance to allow an existing bail bonds business in San José—whether currently operating in an appropriately zoned parcel or not—to move to a parcel where that business may lawfully operate under the current Code.
- 2) Clearly articulate Council's intention that any superseding ordinance relating to the land use regulation of bail bonds businesses will not become effective prior to the expiration of this 22-month and 15-day moratorium.

**BACKGROUND**

The recommendation contemplated by staff and by the signatories of this memorandum fulfills the direction authorized by two prior council votes: to give City staff time to engage with various stakeholders, including the County, bail bonds businesses, and the residential community, and to formulate land use regulations appropriate for bail bonds businesses in neighborhoods and commercial districts. We seek to find a balance between supporting the services provided by bail bonds establishments, and maintaining the quality of life of our neighborhoods.

For the benefit of Council deliberation, we have attempted to address below a few concerns that were raised by bail bonds businesses at past Council hearings and since:

Relocation of Existing Businesses: At the August 11<sup>th</sup> council meeting, several bail bonds businesses expressed concerns about their inability to relocate through the duration of the moratorium. Staff provided verbal assurances that existing businesses could do so, as long as the proposed relocation site is appropriately zoned, and Council moved to include such an exemption within the proposed ordinance. The revised ordinance also allows existing companies to modify their site or business.

An issue has been raised that the proposed ordinance will not allow a business to move an office to a properly zoned site if it currently does not conform with its zoning. Obviously, we want businesses to try to comply with the rules, regardless of their current status. We recommend a revision to the proposed ordinance to allow nonconforming bail bonds businesses, such as those located on parcels zoned "residential," to move to appropriately-zoned commercial parcels.

Uncertainty of Timing: Another issue that was raised relates to the uncertainty of timing of any changes in the zoning code, and the inability of bail bonds businesses to make decisions about leases or site improvements. Although Council cannot bind itself on the timing of an as-yet nonexistent ordinance, with this memorandum, we seek to convey a clear intent that Council will not "pull the rug out" with the implementation of new rules prior to the expiration of the contemplated 22-month and 15-day duration.

Unfairly Burdensome Regulations: At prior hearings, some have suggested that San José unfairly imposes regulatory burdens on bail bonds businesses through the recent actions of Code Enforcement and this Council. They assert that no moratorium is needed, because existing regulations are too restrictive already. Taking a step back to look at the broader context of this discussion demonstrates otherwise.

San José appears far from unique in imposing standard land use conditions upon bail bonds businesses. For at least two decades, San José has applied a requirement for commercial businesses operating in many (if not most) zoning designations to apply for a conditional use permit to operate past midnight. A cursory internet search reveals that large cities such as Long Beach, Los Angeles and Las Vegas similarly require a permit to operate 24 hours.

Moreover, many cities impose several other restrictions as well as constraints not imposed in San Jose. In the downtown area of Los Angeles, bail bond broker uses cannot be located on the ground floor of any building. In Santa Ana, bail bond uses must lie within 2000 feet of a jail facility and cannot be located within 150 feet of a residentially zoned property. Riverside does not allow bail bonds businesses within 600 feet of a public or private school, and within 100 feet of a residence. In Long Beach, bail bonds establishments are "personal services" and allowed as a conditional use only within 600 feet of a police station, jail facility or court facility. Finally, in Las Vegas, bail bond services require a special use permit in commercial areas and cannot operate 24 hours without Council approval.

Contrary to the allegations of some, the City of San José has shown extraordinary restraint in enforcement and has treated bail bonds businesses with remarkable lenience on the enforcement of reasonable land use regulations that have been in place for many years.

A staff field survey finds that between 20 to 26 bail bonds companies—a firm number appears difficult to obtain due to their transitory nature—operate along North First Street from Empire Street to Rosemary Avenue. Of these businesses, 14 to 19 currently operate on parcels zoned for Commercial Office (CO) use, which generally do not allow "personal service" uses such as bail bonds businesses. Three (3) more of those businesses operate on residentially zoned parcels, a designation that also does not permit bail bonds businesses. In short, nearly two-thirds of the bail bonds businesses along this stretch of North First Street operate either

illegally, or in a legal nonconforming status on a parcel for which they are not properly zoned.<sup>1</sup> The same can be said of half of the remaining six (6) other bail bonds businesses operating in the greater downtown area.

Citywide, the numbers look far worse: of the approximately twenty (20) bail bonds establishments operating outside of District 3, *not a single one* operates on a parcel appropriately zoned for bail bonds/ personal services use. At least fourteen (14) are operating out of homes on residential parcels, some of which lie in single-family neighborhoods.

The approximate citywide totals can be summarized as:

Number of Businesses	In Compliance	Not in Compliance	In Residences
52	10	42	18

Some bail bond businesses have portrayed the business climate in San Jose as “oppressive.” We disagree.

Eighth Amendment protections: Some have asserted that the city’s enforcement of land use regulations implicates Constitutional concerns, because the Eighth Amendment protects the rights of the accused from excessive bail. The Constitution remains silent, however, as to the appropriate provision of that bail. Indeed several states, including Illinois, Kentucky, Oregon and Wisconsin, have lawfully abolished any commercial provision of bail services. The courts in those states handle all bail-related matters within the courthouse doors. The American Bar Association has such concerns about the industry that it has advocated for the nationwide abolition of commercial bail bonds businesses.

We don’t suggest or propose anything so severe. The fact remains that bail bonds businesses are for-profit companies, subject to reasonable land use regulations. Under Article 9 of the California Constitution, the city has the right to “make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws.” This case is no exception.

## **CONCLUSION**

Passage of the proposed moratorium benefits all stakeholders. For residents, it halts the proliferation of new establishments around their homes. It provides City staff the time needed to craft a zoning designation for bail bonds establishments consistent with the General Plan and the community’s

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<sup>1</sup> Furthermore, this North First Street area comprises one of the Transit Corridor Commercial districts identified in the San Jose 2020 General Plan. In these districts, the General Plan states that “development should be compatible with existing neighborhoods and not impair the visibility or the character of these neighborhoods.” Critically, “retail uses are encouraged on the street-level floor and office uses are encouraged on upper floors.” Bail bonds establishments, regardless of whether they are called “personal services” or “financial institutions”, are not retail uses. As such, the proliferation of bail bonds businesses on the street level appears plainly inconsistent with the General Plan.

needs. Bail bonds businesses can continue to operate with minimal government intrusion for the next 22 months and 15 days, can provide input to the City on the future ordinance, and can take the time necessary to comply with the City's reasonable land use regulations.

Should the Council decline to approve the proposed staff recommendation, there would be no proposed changes in existing land uses or regulations. Bail bonds companies would be required to comply with longstanding city ordinances, like any other business. Those businesses operating 24 hours would need to obtain a permit; businesses operating in non-conforming zoning may need to apply for legal nonconforming status, rezoning, or move. With no pending change to those rules, this matter becomes one of enforcement. We urge approval.